

U. S. DEPARTMENT OF LABOR  
Employees' Compensation Appeals Board

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In the Matter of DUANE E. FREEMAN and U.S. POSTAL SERVICE,  
POST OFFICE, Philadelphia, Pa.

*Docket No. 95-2183; Submitted on the Record;  
Issued January 7, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs abuse its discretion in its May 26 and June 30, 1994 decisions awarding an attorney's fee in the amount \$5,800.00.

On October 18, 1990 appellant, then a 25-year-old letter carrier, filed a notice of traumatic injury and claim for compensation alleging that he injured his middle and lower back in the course of his federal employment. The Office accepted the claim for lumbar strain and compensation for total temporary disability was awarded. The Office subsequently suspended appellant's compensation on September 28 and June 12, 1995 because appellant refused to attend a medical examination.

On December 10, 1993 John S. Fusco, appellant's attorney, submitted a fee petition requesting \$8,500.00 in fees for representing appellant. In support, appellant's attorney sent an itemized fee petition documenting the services performed from March 12, 1991 through December 8, 1993, the time spent on the services, and the hourly rate charged. The attorney also provided appellant with a form in which to agree or disagree with the services requested.

In a letter dated January 13, 1994, the Office wrote to appellant stating that it had received the fee request of \$8,500.00. It stated that before it considered the request, it wanted "to give you the opportunity to comment in the request and to state your view as to whether the fee charged is reasonable and appropriate." The Office noted that it provided a copy of the fee request and stated that if it did not hear from appellant by March 3, 1994 it would assume he had no comment.

On February 23, 1994 appellant responded that "[A]ccording to 20 C.F.R. § 10.145(f), you will be violating my right if you 'consider the request and approve a fee which is determined to be fair and reasonable,' without my approval."

On May 26, 1994 and June 30, 1994 the Office approved a fee of \$5,800.00. The Office noted that a fee of \$8,500.00 was requested and that appellant failed to contest the reasonableness of the amount. It noted that it examined the case record for the following criteria: usefulness of the representative's services, nature and complexity of the claim, actual time spent on the development and presentation of the claim, amount of charges for similar services, professional qualifications of the representative, and all other pertinent factors. Based on these factors, the Office determined that a fee of \$5,800.00 was reasonable.

In letters dated May 26 and June 24, 1994 appellant contended that the Office violated 20 C.F.R. § 10.145(f) by considering the fee request and approving a fee it considered fair and reasonable.

The Board finds that the Office did not abuse its discretion in its May 26 and June 30, 1994 decisions awarding an attorney's fee in the amount of \$5,800.00.

It is not the function of the Board to determine the fee for services performed by a representative of a claimant before the Office. That is the function within the discretion of the Office based on the criteria set forth in section 10.145 of Title 20 of the Code of Federal Regulations.<sup>1</sup> This section provides in pertinent part:

“The fee approved by the Office will be determined on the basis of the actual necessary work performed and will generally include but are not limited to the following factors:

- (1) Usefulness of the representative's services to the claimant.
- (2) The nature and complexity of the claim.
- (3) The actual time spent on develop and presentation of the claim.
- (4) The amount of compensation accrued and potential future payments.
- (5) Customary local charges for similar services.
- (6) Professional qualifications of the representative.”

The Office's May 26 and June 30, 1994 decisions recited that the relevant criteria contained in 20 C.F.R. § 10.145 were considered. There is no indication that the attorney did not actually devote the stated time to the case for which he sought approval,<sup>2</sup> and the amounts of time listed for each listed service were not inordinate.<sup>3</sup> An attorney has broad latitude in exercising his professional judgment in connection with the preparation of his client's case. He has the responsibility to study and research those matters which, in his professional opinion,

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<sup>1</sup> 20 C.F.R. § 10.145.

<sup>2</sup> See *Andrew D. Finch*, 25 ECAB 24 (1973).

<sup>3</sup> See *Charles A. Mikalaynas*, 40 ECAB 1277 (1989).

might further his client's case. Such work, insofar as it is within reasonable bounds, is entitled to consideration in fixing the fee, even though all the work may not prove helpful in producing relevant evidence or legal precedent.<sup>4</sup> Appellant was given an opportunity to comment on the reasonableness of the fee, as required,<sup>5</sup> but merely responded that 20 C.F.R. § 10.145(f) precluded the Office from awarding a fee without his approval. This is clearly not the case. Section 10.145(f) only precludes the Office from paying or assisting in the collection of a fee and from routinely forwarded compensation payments to a representative.<sup>6</sup> Under these circumstances, the Board finds that the Office did not abuse its discretion by approving a fee of \$5,800.00 in its May 26 and June 30, 1994 decisions.

The decisions of the Office of Workers' Compensation Programs dated May 26 and June 30, 1994 are affirmed.

Dated, Washington, D.C.  
January 7, 1998

David S. Gerson  
Member

Willie T.C. Thomas  
Alternate Member

Michael E. Groom  
Alternate Member

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<sup>4</sup> *Edgar Aikman*, 32 ECAB 1570 (11981).

<sup>5</sup> *See Rosa M. Thomas-Hunter*, 42 ECAB 500 (1991).

<sup>6</sup> *See* 20 C.F.R. § 10.145(f).